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# The “Statutory Rape” Myth: A Case Law Study of Sexual Assaults against Adolescent Girls

Isabel Grant and Janine Benedet

*Dans le présent article, les auteures passent en revue trois ans de jurisprudence canadienne impliquant des infractions de nature sexuelle contre des adolescentes âgées de douze à dix-sept ans. Elles tentent d'établir quels types de cas se rendent au tribunal, qu'ils donnent lieu à des condamnations ou non, et quels types de peine sont imposés aux individus condamnés pour ces infractions. Dans la grande majorité des cas examinés, les hommes étaient considérablement plus âgés que les plaignantes. La différence d'âge moyenne entre l'accusé et la plaignante était de dix-neuf ans et, en excluant les membres de la famille, de 15,6 ans. Les quelques cas impliquant de jeunes hommes impliquaient souvent de la violence en plus de l'agression sexuelle. Dans environ 30 pour cent des cas, la plaignante dormait ou était en état d'ébriété lorsqu'au moins une partie de ces agressions était commise. Les cas présentent un portrait des crimes où l'intersection des inégalités et des vulnérabilités contribue à expliquer pourquoi ce groupe démographique est ciblé par la violence sexuelle plus que tout autre groupe d'âge.*

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*This article examines three years of Canadian case law involving sexual offences against adolescent girls between the ages of twelve and seventeen inclusive, with a view to identifying the types of cases that are making it to court, whether these cases are resulting in convictions, and what are the types of sentences being imposed on individuals convicted of these offences. A significant majority of cases under review involved men considerably older than the complainant. The average age difference between the accused and the complainant was nineteen years and, where family members were excluded, 15.6 years. The small number of cases involving close-in-age peers often included violence additional to the sexual assault. In approximately 30 percent of cases, the complainant was asleep or intoxicated when at least some of the abuse was initiated. The cases present a picture of crimes in which intersecting inequalities and vulnerabilities help to explain why this demographic is targeted for sexual violence more than any other age group.*

We have been asked by many people to accept that women are making progress, because one sees our presence in these places where we weren't before. And those of us who are berated for being radicals have been saying: "That is not the way we measure progress. We count the number of rapes. We count the women who are being battered. We keep track of the children who are raped by their fathers. We count the dead. And when those numbers start to change in a way that is meaningful, we will then talk to you about whether we can measure progress."<sup>1</sup>

## Introduction

Adolescent girls face a higher risk of sexual assault than women and girls in any other age group.<sup>2</sup> While the existing data are helpful in identifying the increased incidence of sexual violence for this group of victims, very little Canadian research has addressed the issues around prosecution of these cases as a discrete group by the criminal justice system, beyond consideration of the age of consent.<sup>3</sup> Some of the age-of-consent research has contended that adolescent experimentation has been over-criminalized,<sup>4</sup> which would suggest that prosecutions are targeting very young men, just outside the close-in-age exceptions. When popular attention is directed to the sexual abuse of teenagers, the focus is often on institutional cases with large numbers of male and female victims, such as abuse by the clergy or in the context of sports coaching or similar pursuits.

In this article, we look at the Canadian criminal justice system's treatment of sexual assault against adolescent girls through an examination of all available Canadian case law over a three-year period from 2014 to 2016 inclusive. We argue that a narrow focus on the age of consent risks obscuring the kind of sexual abuse that makes up the large majority of these cases. Our research confirms that, overwhelmingly,

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1. Andrea Dworkin, "Mass Murder in Montreal: The Sexual Politics of Killing Women" in Andrea Dworkin, *Life and Death: Unapologetic Writings on the Continuing War against Women* (New York: Free Press, 1997) 105 at 106.
  2. Statistics Canada, *Children and Youth in Canada*, by Canadian Centre for Justice Statistics, in Canadian Centre for Justice Statistics Profile Series, Catalogue No 85F0033MIE (Ottawa: Statistics Canada, June 2001) at 10.
  3. Joseph J Fischel, "Per Se or Power? Age and Sexual Consent" (2010) 22:2 Yale Journal of Law and Feminism 279. Some scholars supported the raising of the age of consent. Janine Benedet, "The Age of Innocence: A Cautious Defense of Raising the Age of Consent in Canadian Sexual Assault Law" (2010) 13:4 New Criminal Law Review 665 at 672; Helmut Graupner, "Sexual Consent: The Criminal Law in Europe and Overseas" (2000) 29:5 Archives of Sexual Behaviour 415. Others, however, opposed it. Julie Desrosiers, "Raising the Age of Sexual Consent: Renewing Legal Moralism?" in Elizabeth A Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012) 569.
  4. Desrosiers, *supra* note 3 at 577.

these are not technical sexual assaults—so-called statutory rapes—that turn on arbitrary age distinctions. Only a small number of the cases involved girls in relationships with young men just outside the close-in-age exceptions, and, in many of those cases, the complainant did not describe herself as a willing participant. Nor are most of these cases ones in which an adult uses his position of power and influence to sexually assault large numbers of unrelated victims. Instead, they are cases of sexual assault by biological fathers, stepfathers, uncles, older brothers, adult friends of the family, and, in a small number of cases, strangers.

We think it is important to identify the patterns that emerge from this large group of cases in order to present a picture of the kinds of cases that are making it to trial and sentencing in Canadian courts. How often are the accused in these cases being convicted? Does the relationship between the accused and the complainant have an impact on conviction rates and/or sentences? What types of sentences are being imposed? These cases point to a number of significant conclusions that help to explain why adolescent girls are targeted for sexual assault in such high numbers and what barriers these girls face in trying to escape from this violence and in seeking justice through the criminal law.

### *A Review of Existing Knowledge*

Finding precise data on sexual offences against adolescents is often challenging in part because “adolescence” is not a legal category and because different studies use different age groups when examining adolescence. For example, younger adolescents are often grouped together with children in studies of child sexual abuse,<sup>5</sup> and older adolescents are sometimes included with young women.<sup>6</sup> We do know that roughly 55 percent of all victims of sexual assault are under the age of eighteen (although youth under eighteen make up only 20 percent of the population)<sup>7</sup> and that over

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5. See e.g. Paul Rogers, Leigh Titterton & Michelle Davies, “Attributions of Blame and Credibility in a Hypothetical Child Sexual Abuse Case: Roles of Victim Disability, Victim Resistance and Respondent Gender” (2009) 56:3 *International Journal of Disability, Development and Education* 205 at 210 (vignettes used in the study methodology involved the hypothetical case of a twelve-year-old victim of sexual assault, repeatedly categorized as a “child”). See also Statistics Canada, *Child and Youth Victims of Police-Reported Violent Crime, 2008*, by Lucie Ogrodnik, in Canadian Centre for Justice Statistic Profile Series, Catalogue No 85F0033M, No 23 (Ottawa: Statistics Canada, March 2010) [Ogrodnik] (report addresses children and youth together).
  6. Margo E Pearce et al, “The Cedar Project: Historical Trauma and Vulnerability to Sexual Assault among Young Aboriginal Women Who Use Illicit Drugs in Two Canadian Cities” (2015) 21:3 *Violence against Women* 313 at 316 (parameters of the women studied were defined as being between fourteen and thirty years old).
  7. Statistics Canada, “Table 17-10-0005-01: Population Estimates on July 1, by Age and Sex” <<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1710000501>> (2017 figures).

80 percent of these complainants are female.<sup>8</sup> According to a 2008 survey by the Canadian Centre for Justice Statistics, adolescent girls experience rates of sexual assault more than double that of young adult women.<sup>9</sup> The overrepresentation of female victims increases as girls move into adolescence. While rates of sexual victimization for boys remain relatively constant between the ages of five and fifteen, rates of sexual victimization for girls under the age of eighteen are highest through the teenage years, peaking at thirteen to fifteen years of age.<sup>10</sup> One study found that adolescent girls from the ages of fifteen to seventeen sustain the highest rates of physical injury from sexual assault as compared to any other age group of female complainants.<sup>11</sup>

Adolescents sometimes wait a considerable time after the sexual assault before coming forward,<sup>12</sup> particularly where the offence was committed by a family member or another person in a position of authority.<sup>13</sup> Sexual assault by a family member, once disclosed, can disrupt the entire family, and adolescent girls who report such assaults bear the brunt of this reality.<sup>14</sup> Adolescent girls who are particularly vulnerable, such as girls in state care,<sup>15</sup> those involved with drug use,<sup>16</sup> and prostituted girls,<sup>17</sup> are all at a higher risk of being sexually assaulted. Indigenous girls are overrepresented in all of these groups.<sup>18</sup> The British Columbia Representative for Children and Youth, Mary Ellen Turpel-Lafond, studied sexual offences against 121 children in the custody of the Ministry of Child and Family Development in British Columbia and found that 109 of the 121 victims (90 percent) were girls, and approximately 80 percent of these offences were committed when the girls were between the ages of thirteen and

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8. Statistics Canada, *Police-Reported Sexual Offences Against Children and Youth in Canada, 2012*, by Adam Cotter & Pascale Beaupré, in *Juristat*, Vol 34, No 1, No 85-002-X (Ottawa: Statistics Canada, 28 May 2014) at 10–11 [Cotter & Beaupré].
  9. Ogrodnik, *supra* note 5 at 12–13.
  10. *Ibid.*
  11. Catherine White & Iain McLean, “Adolescent Complainants of Sexual Assault: Injury Patterns in Virgin and Non-Virgin Groups” (2006) 13:4 *Journal of Clinical Forensic Medicine* 172 at 172, 178 (out of 224 adolescent girls examined at a sexual assault referral centre over eighteen months, 51% received a non-genital injury; among girls who had not had prior sexual intercourse, 53% had a genital injury as compared to 32% amongst girls who had already experienced sexual intercourse).
  12. Cotter & Beaupré, *supra* note 8 at 12.
  13. *Ibid.*
  14. See e.g. *R v LJ*, 2015 ONCJ 777, *aff’d* 2016 ONCA 593; *R v GC*, 2015 ONSC 5068; *R v GRH*, 2016 BCPC 365. See also Diana EH Russell, *The Secret Trauma: Incest in the Lives of Girls and Women* (New York: Basic Books, 1986).
  15. British Columbia, Representative for Children and Youth, *Too Many Victims: Sexualized Violence in the Lives of Children and Youth in Care*, by Mary Ellen Turpel-Lafond (Victoria: Representative for Children and Youth, October 2016) at 8, 19 [Turpel-Lafond].
  16. Pearce et al, *supra* note 6 at 319.
  17. *Ibid.*
  18. Turpel-Lafond, *supra* note 15 at 1, 8, 12, 19; Pearce et al, *supra* note 6 at 315, 323.

eighteen.<sup>19</sup> Overall, 61 percent of those reporting sexual abuse were Indigenous girls despite the fact that Indigenous girls comprised 25 percent of the total children in care during the time period under study.<sup>20</sup> By contrast, Indigenous boys were slightly less likely than non-Indigenous boys to be victims of sexual abuse.<sup>21</sup> Another Canadian study of young Indigenous women who used drugs (which included adolescents) found that these women and girls were twice as likely to have been sexually assaulted if they had at least one parent who had been sent to residential school.<sup>22</sup>

Girls with disabilities are also particularly vulnerable to sexual assault.<sup>23</sup> In Canada, approximately one-quarter of women with intellectual or mental health disabilities report being sexually abused by an adult before the age of fifteen.<sup>24</sup> Resistance may be more difficult for girls with disabilities, and disabilities can also impair a girl's ability to understand that an adult's conduct is wrong. Girls with disabilities also face additional barriers to reporting, particularly where they have communication challenges or intellectual disabilities.<sup>25</sup> These same challenges also create barriers to effective prosecution as these girls may be assessed as unreliable witnesses.<sup>26</sup>

Existing data indicate that the complainant's relationship to the perpetrator of the sexual assault shifts as girls move into adolescence. As the age of the complainant increases, the percentage of sexual assaults that take place in the home decreases.<sup>27</sup> A majority of sexual offences against children are committed by family members,<sup>28</sup> whereas for adolescent girls between the ages of fourteen and seventeen, as many as 72 percent of offences are committed by someone outside of the family.<sup>29</sup> Most of these men, however, are not strangers; most adolescent complainants know their

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19. Turpel-Lafond, *supra* note 15 at 11.

20. *Ibid* at 1. Of course, 25 percent demonstrates the disturbing overrepresentation of Indigenous children in care.

21. *Ibid* at 12.

22. Pearce et al, *supra* note 6 at 322.

23. Rogers, Titterton & Davies, *supra* note 5 at 205–06.

24. Statistics Canada, *Violent Victimization of Women with Disabilities, 2014*, by Adam Cotter, in *Juristat*, Vol 38, No 1, Catalogue No 85-002-X (Ottawa: Statistics Canada, 25 March 2018). This study also reports that approximately 38% of women with disabilities have experienced childhood physical and/or sexual abuse, compared to approximately 23% of women without disabilities.

25. Rogers, Titterton & Davies, *supra* note 5 at 205–06.

26. Janine Benedet & Isabel Grant, "Hearing the Sexual Assault Complaints of Women with Mental Disabilities: Evidentiary and Procedural Issues" (2007) 52 McGill Law Journal 515 at 524–46.

27. Statistics Canada, *Measuring Violence against Women: Statistical Trends*, by Maire Sinha, in *Juristat*, Vol 33, No 1, Catalogue No 85-002-X (Ottawa: Statistics Canada, 25 February 2013) at 13.

28. Statistics Canada, *Children and Youth as Victims of Violent Crime*, by Kathy AuCoin, in *Juristat*, Vol 25, No 1, Catalogue No 85-002-XIE (Ottawa: Statistics Canada, 20 April 2005) at 7 [AuCoin].

29. *Ibid* at 8.

perpetrator.<sup>30</sup> When the perpetrator is a family member, he is most likely to be the complainant's father, brother, or other male relative.<sup>31</sup> Canadian data suggest that, for youth between the ages of twelve and fifteen, only approximately 13 percent of reported sexual assaults are committed by strangers.<sup>32</sup>

### *The Adolescent Girl Witness*

There are some studies that shed light on how adolescent complainants will fare in the criminal justice system. There is a significant literature examining the degree to which the attitudes of potential jurors are shaped by the age of the complainant and other offence- and perpetrator-related variables. These studies demonstrate the intractability of stereotypes around the "ideal victim" that affect young female sexual assault complainants—stereotypes around their propensity to lie and their complicity in the sexual assaults against them.

Most of these studies use mock jurors who are provided with a scenario where the complainant's age (and sometimes other variables) is manipulated, and the researchers attempt to identify the impact of these age shifts on jurors' perceptions of the complainant in terms of trustworthiness and credibility. While there are methodological shortcomings to the studies,<sup>33</sup> certain findings appear to be quite robust and

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30. Cotter & Beaupré, *supra* note 8 at 11 (88% of victims under the age of eighteen knew their perpetrator). In Cotter & Beaupré's study, the rate of "stranger" sexual assaults increased consistently with the complainant's age. While it was 12% for youth up to the age of seventeen, 19% of sexual assaults against those who were between sixteen and seventeen were committed by strangers.
  31. We use the term "fathers" to refer collectively to biological, step, foster, and adoptive fathers. In AuCoin's study, 36% of those accused of sexual assault were complainants' fathers, 32% were complainants' brothers, and 28% were complainants' male extended relatives. AuCoin, *supra* note 28. In Ogrodnik's study, 35% of those accused of sexual assault were complainants' fathers, 27% were complainant's brothers, and 37% were complainants' other male relatives. Ogrodnik, *supra* note 5.
  32. Cotter & Beaupré, *supra* note 8 at 26.
  33. One of the shortcomings is that college students, who are usually the subjects in these studies, are not representative of jury pools more broadly. See e.g. Brian H Bornstein, "The Ecological Validity of Jury Simulations: Is the Jury Still Out?" (1999) 23:1 Law and Human Behavior 75. See also Richard L Wiener, Daniel A Krauss & Joel D Lieberman, "Mock Jury Research: Where Do We Go from Here?" (2011) 29:3 Behavioral Sciences and the Law 467. However, researchers have attempted to resolve this concern by using different samples that are more reflective of the jury pool. See e.g. Samantha J Tabak & Bianca Klettke, "Mock Jury Attitudes towards Credibility, Age, and Guilt in a Fictional Child Sexual Assault Scenario" (2014) 66:1 Australian Journal of Psychology 47. Interestingly, changing the pool of participants did not appear to change the results. Another shortcoming is that not all studies included a deliberation component. In some studies, mock jury participants evaluated a case individually rather than as part of a jury. Tabak & Klettke also incorporated deliberation into their study, which was built around focus groups drawn from Australia-wide recruitment.

have been replicated. Overall, the studies suggest both that age matters in credibility assessments of a sexual assault complainant and that those credibility assessments have a significant impact on the likelihood of conviction. Generally, young children are more believable as sexual assault complainants than adolescents. Apparently, the ideal victim is approximately nine to ten years old, and her credibility goes down from there, such that fifteen year olds are considered less credible than nine year olds but more credible than twenty-two year olds.<sup>34</sup>

Biana Klettke and Sophie Simonis conclude that, as adolescents become closer to being women, the influence of rape myths that apply to women above the age of consent becomes stronger. Nine and ten year olds, by contrast, are seen as being old enough to be able to communicate the facts but young enough to escape such stereotyping.<sup>35</sup> Notably, these findings are directly contrary to findings about the reliability of child eyewitness testimony generally. Outside of the sexual offences context, adult eyewitnesses are perceived as being more credible, accurate, and reliable than child eyewitnesses.<sup>36</sup> Thus, it appears that, in the context of non-sexual crimes, adult witnesses are more believable because they are considered more reliable reporters of the facts. When it comes to sexual assault, adolescents and young women are more likely to be perceived as unreliable reporters of the facts than pre-pubescent children. The salience of these stereotypes is also supported by the finding that the girls who were portrayed as victims of strangers were viewed more positively by mock jurors and as more credible than those who were victims of a family member or friend.<sup>37</sup> Mock jurors also rate a victim as being less culpable where she resists the sexual assault either verbally or physically.<sup>38</sup>

Most of these studies show that conviction rates also decrease as female complainants get older such that cases involving a child complainant are more likely than those involving a fifteen year old to result in a conviction. For instance, a 2014 Australian study found that mock jurors were more likely to vote guilty than not guilty when dealing with a six-year-old complainant and more likely to vote not guilty than guilty when dealing with an eleven-year-old or fifteen-year-old complainant even though the circumstances were otherwise the same. As girls become closer to being women, we see “higher incidences of victim blaming [which has] serious implications for the outcome of trials.”<sup>39</sup> Studies have consistently shown that males

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34. Bianca Klettke & Sophie Simonis, “Attitudes Regarding the Perceived Culpability of Adolescent and Adult Victims of Sexual Assault”, ACSSA Aware No 26 (June 2011) 7 at 11 <<https://aifs.gov.au/sites/default/files/publication-documents/n26.pdf>>.

35. *Ibid.*

36. Kaila Bruer & Joanna D Pozzulo, “Influence of Eyewitness Age and Recall Error on Mock Juror Decision-Making” (2014) 19:2 *Legal and Criminological Psychology* 332 at 344.

37. Michelle Davies & Paul Rogers, “Perceptions of Blame and Credibility toward Victims of Childhood Sexual Abuse: Differences across Victim Age, Victim-Perpetrator Relationship, and Respondent Gender in a Depicted Case” (2009) 18:1 *Journal of Child Sexual Abuse* 78 at 81, 88.

38. Klettke & Simonis, *supra* note 34 at 7, 9.

39. Tabak & Klettke, *supra* note 33 at 53.



are more likely to attribute blame to victims than females.<sup>40</sup> Overall, this literature suggests that there is a profound distrust of women who complain of sexual assault and that the closer girls are to being perceived as women, the more likely they are to be disbelieved or seen as being responsible for the sexual violence against them.<sup>41</sup>

### *Our Case Law Study*

We examined three years of case law from all provinces and territories, in English and French, from 1 January 2014 to 31 December 2016, involving sexual offences against complainants who were between the ages of twelve and seventeen inclusive at the time the offence took place. We chose twelve as the lowest age threshold because twelve is the youngest age for the close-in-age exceptions; a girl younger than twelve is truly a child in the eyes of the criminal law and can never legally consent to sexual activity.<sup>42</sup> We chose seventeen as the upper threshold because eighteen is the age at which many of the indicia of adulthood are commonly acquired.<sup>43</sup> Seventeen is also the oldest age that falls within any of the criminal sexual offences that apply specifically to young people as complainants.<sup>44</sup>

We looked at a range of offences that are commonly charged in cases involving young complainants, including all levels of sexual assault (sections 271–73 of the *Criminal Code*), sexual interference (section 151), invitation to sexual touching (section 152), and sexual exploitation of a young person (section 153).<sup>45</sup> We also included offences that no

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40. Rogers, Titterton & Davies, *supra* note 5 at 206–07, 220–21; Davies & Rogers, *supra* note 37 at 79.

41. Klettke & Simonis, *supra* note 34 at 7, 8.

42. While a girl younger than twelve cannot consent, there may be rare cases where a very youthful accused mistakenly believes the complainant to be within one of the close-in-age exceptions. Thus, for example, if a thirteen-year-old boy mistakenly believed an eleven-year-old complainant to be twelve, and she agreed to sexual contact with him, there is some support in the case law that this would be a defence if he took all reasonable steps to inquire into her age. We did not have any cases in our sample that fit this pattern.

43. For some of the girls in these cases, the sexual assaults against them continued into adulthood. These cases were included in our analysis if the girl fell into the relevant age group at any point during which the sexual activity took place.

44. Sexual exploitation of a young person applies to sixteen- and seventeen-year-old victims; various child pornography and prostitution and Internet luring offences also apply to youth under eighteen years of age. *Criminal Code*, RSC 1985, c C-46, s 153.

45. Sexual assault is any physical contact of a sexual nature, without the consent of the other person. *Ibid*, s 271. Proof that the complainant is below the age of consent can be substituted for proof of non-consent. More serious forms of sexual assault are where a weapon is used, bodily harm is caused, where there are multiple perpetrators (s 272), or where the complainant is wounded, maimed, disfigured, or her life endangered (s 273). Sexual interference (s 151) and invitation to sexual touching (s 152) are touching

longer exist (such as rape, indecent assault, and gross indecency) in prosecutions where the sexual assault took place when these crimes were still in effect.<sup>46</sup> A number of other charges, such as those related to child pornography, arose in our study but were not part of these exhaustive searches.

Our earlier work on the mistake-of-age defence<sup>47</sup> led us to suspect that prosecutors were not focusing their energies on prosecuting teenage males just outside the close-in-age exceptions with apparently willing female partners, except perhaps for sexual activity with very young complainants. We expected that the case law would demonstrate a much bigger gap between the age of the complainant and the age of the accused. Based on the literature described above, which suggests that convictions may be more difficult to obtain as the complainant gets older, we also expected that prosecutions might be less successful as adolescent girls get closer to an age where they are seen as young women, at which time perceptions of the complainant and her credibility would be increasingly influenced by stereotypes about women's complicity in sexual activity leading to the complaint and about their tendency to lie.

We found a total of 510 cases over the three-year time period under study with a total of 680 written judgments. The number of judgments is larger than the number of cases because some cases had reasons for judgment and reasons for sentence and/or an appeal from either the verdict or the sentence. Because 252 of the written judgments were reasons for sentence, and an additional forty-two were sentence appeals, convictions were overrepresented in these cases. We recognize that this is not an exhaustive population of cases that proceed to a verdict because we are missing cases where there were no written reasons, such as in a jury trial<sup>48</sup> or a guilty plea with no

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or inviting the complainant to touch any part of their own body or the accused's body, for a sexual purpose, where the complainant is under the age of sixteen. These offences, added in 1988, go beyond sexual assault in criminalizing situations where the accused encourages the complainant to undress or touch herself or where the accused requests sexual activity from the young person. Sexual exploitation is sexual contact with a young person aged fourteen to seventeen (pre-2008) or sixteen to seventeen (2008–present), regardless of consent, where the accused is in a position of trust or authority or a relationship of dependency or exploitation with the young person.

46. Rape required proof of sexual intercourse, while indecent assault covered other kinds of non-consensual sexual activity. Gross indecency was most often used to prosecute oral intercourse. These offences were abolished and replaced with sexual assault in 1983.
47. Isabel Grant & Janine Benedet, "Confronting the Sexual Assault of Teenage Girls: The Mistake of Age Defence in Canadian Sexual Assault Law" (2019) 97:1 *Canadian Bar Review* 628.
48. In our study, 378 of 518 accused persons (73%) went to trial and 140 (27%) pleaded guilty. Of the 378 that went to trial, 315 (83%) were judge-alone trials, 39 (10%) were jury trials, and, for 24 (6%) cases, the type of trial was unknown. Only a very small minority of the total number of sexual offence prosecutions in Canada involve juries, as jury trials are only available where the case proceeds on indictment in superior court and where the accused elects trial by jury.

written reasons for sentence. We are also missing cases where, for example, charges were dismissed at a preliminary inquiry or dropped/stayed for other reasons. However, because the number of cases is so large, and we have no reason to conclude that the kinds of demographic factors we are interested in are skewed towards a particular kind of trial, it is possible to draw some conclusions about which kinds of cases are going forward in the criminal trial process.

The 510 cases under study involved 625 female complainants between the ages of twelve and seventeen inclusive and 518 accused persons.<sup>49</sup> In 87 percent of the cases, there was only one complainant within the relevant age group, and in an additional 10 percent of cases there were two complainants. In the remaining cases, there were three or more complainants including one case that involved fourteen complainants.<sup>50</sup> Most of the cases included charges of sexual assault and sexual interference, and, where convictions resulted on both counts, one of these charges was often stayed because it was duplicative on the basis of the rule in *R v Kienapple*.<sup>51</sup> In eighty-four cases, there were also additional complainants who were outside the scope of the study because of their age, sex, or the offences charged.

Because we had considerably more complainants than accused persons, the results of this study are presented from the perspective of the complainant unless otherwise indicated. This perspective better conveys the nature of these cases where multiple complainants are involved. We depart from this perspective below when analyzing sentencing information, which will be presented from the perspective of the perpetrator.

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49. In some cases, the abuse spanned many years, commencing before the age of twelve and/or ending after the age of eighteen. We included all cases in which one or more of the sexual offences took place when the complainant was between the ages of twelve and seventeen.

50. In *R c Girard Lévesque*, 2015 QCCQ 4509 [*Girard Lévesque*], the accused was charged with fifty-two counts in connection with crimes against fourteen complainants. He followed the same approach with all complainants by targeting them at random and sending a friend request over a social media website. He would then begin a conversation and gradually make sexual remarks before offering them money in exchange for sex. The accused met at least two of the complainants in person and had sex, despite the fact that the girls did not want it to take place. The accused was convicted of sexual offences against all fourteen complainants.

51. Where the accused is convicted of more than one count for the same conduct, the court will stay the less serious count under *R v Kienapple* (1974), [1975] 1 SCR 729. There were 510 cases that included charges of sexual assault; nineteen cases with sexual assault with a weapon or causing bodily harm charges; and three cases with charges of aggravated sexual assault. There were 456 charges of sexual interference, 161 charges of invitation to sexual touching, and 104 cases involving charges of sexual exploitation.

*The Complainants*

It is difficult to be precise about the ages of the 625 complainants because many of the sexual assaults were alleged to have taken place over a number of years, sometimes beginning when the complainant was very young but continuing into adolescence and sometimes extending into adulthood. If one isolates the girls who reported sexual assault(s) occurring over a period of one year or less, the average age of the complainants was 14.3 years, consistent with the general evidence about the peak age for sexual assaults being around fourteen years of age.<sup>52</sup> For the 605 complainants whose ages were known, the average age at which the abuse began was 12.7 years (see Tables 1 and 2).

Table 1: Age Distribution of Complainants Abused for One Year or Less

Age of complainant	12–13 (%)	14–15 (%)	16–17 (%)	Unknown (%)	Total
Number of complainants	121 (30)	200 (50)	74 (18)	8 (2)	403 (100)

Table 2: Average Age of Complainants When Abuse Began

Age of complainant	Under 12 (%)	12–13 (%)	14–15 (%)	16+ (%)	Unknown (%) <sup>53</sup>	Total
Number of complainants	156 (25)	154 (25)	215 (34)	80 (13)	20 (3)	625 (100)

Looking at just the complainants who reported abuse over an extended period of time, the average age when the reported abuse started was 9.94 years of age and 15.15 years of age when the abuse ended. For more than half of the girls who reported abuse over a number of years, girls reported the abuse starting before the age of ten. Given the length of time during which these girls are alleging sexual assault, this finding appears to support the assertion that younger girls experience abuse over the lengthiest duration.

As expected, a large majority of our cases involved complainants who knew the accused. There were only twenty-six complainants (4 percent) who alleged

53. Throughout this article, we have rounded off all percentages to the nearest whole number and, thus, some percentages add up to slightly more or less than 100%.

52. These girls were included in the study because there were strong indicators that they were in the relevant age group. For example, a complainant may be referred to as a “teenager” at the time of the assault and the accused is charged with offences that indicate that the complainant must have been under the age of consent. In other cases, we might know that the assault took place sometime within a range of a few years (all within the age range) but not know exactly which year.

sexual assault by a stranger, a number that is considerably lower than the average of 12 percent cited in the social science literature for adolescents generally.<sup>54</sup> Forty-six percent of complainants reported being sexually assaulted by family members, and more than half of those family members were fathers. Stepfathers (including mothers' live-in boyfriends) were the largest category of accused family members (16 percent), followed by uncles (9 percent), biological fathers (8 percent), and grandfathers (3 percent). The next largest group of accused was comprised of older acquaintances (who were more than six years older than the complainant and outside the close-in-age exceptions). This group made up approximately 14 percent of the cases. Fifty complainants (8 percent) alleged assault by someone other than an ongoing boyfriend who they met online.<sup>55</sup> Only 5 percent of complainants alleged sexual assault by someone who was described as a boyfriend.

Table 3 demonstrates the relationship between the complainant and the alleged perpetrators. Some complainants reported sexual assault by more than one perpetrator, such as where a mother and father together were accused of sexually assaulting their daughter. These complainants are listed more than once in the table to reflect their different relationships with the multiple perpetrators.

The relationship between the accused and the complainant varied based on the complainant's age. Consistent with the social science evidence described above, we found that younger girls were more likely to allege sexual assault by a family member, while girls fourteen and over were more likely to allege sexual assault by someone outside of the family (Table 4).

Table 5 demonstrates in a more simplified way how the percentage of family members accused of sexual assault decreases as the complainant gets older, while the percentage of non-relatives increases accordingly.

A large number of complainants were assaulted in their own homes. Approximately 37 percent of the girls for whom this information is available were living with the person they accused of sexual assault, and, in another 11 percent of cases, the accused was a guest in the complainant's home. Table 6 demonstrates the precise breakdown by age.

These cases highlight that, particularly for the youngest adolescent girls, the home can be a dangerous place. In addition, disclosing the sexual abuse can cause considerable disruption to the complainant's family situation, a disruption for which they may sometimes be blamed.<sup>56</sup>

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54. Cotter & Beaupré, *supra* note 8. The numbers cited in this sentence applied to boys and girls although we do not know if the number of strangers would be much higher for boys. It may be that cases involving strangers are less likely to have an identifiable perpetrator and so are less likely to result in charges.

55. Twenty-two accused were also charged with a total of 65 counts of Internet luring, including one accused charged with luring 14 complainants. *Girard Lévesque, supra* note 50.

56. See e.g. *R v G(PG)*, 2014 ONCJ 369.

Table 3: Number of Complainants by Relationship to Accused

Relationship of accused to complainant		Number of complainants (%)
Older acquaintance (more than six years older than the complainant) <sup>a</sup>		87 (14)
Peer (e.g. friend, classmate) (within six years of the complainant in age)		39 (6)
Family friend		57 (9)
Friend's father (includes foster father and stepfather) <sup>b</sup>		25 (4)
Boyfriend		30 (5)
Stranger		26 (4)
Parent	Mother	4 (0.6)
	Biological father	54 (8)
	Stepfather/mother's boyfriend	104 (16)
	Foster father	7 (1)
	Adoptive father	3 (0.4)
Other family	Grandfather/grandmother's spouse	19 (3)
	Uncle	60 (9)
	Brother (including foster/step/half)	24 (4)
	Cousin	13 (2)
	Other relative	4 (0.6)
Other adult in position of trust or in exploitative relationship	Teacher/school employee	12 (2)
	Doctor/health care worker	7 (1)
	Religious leader	9 (1)
	Employer	7 (1)
	Pimp	8 (1)
	Drug supplier	2 (0.3)
	Coach/activity leader	10 (1.5)
Unknown	Other <sup>c</sup>	2 (0.3)
		23 (4)
Total		636 <sup>d</sup>

*Notes:* <sup>a</sup> For the purposes of categorization, we defined peers and older acquaintances in the following way: both groups include those who are not relatives, not family members of friends, not boyfriends, not persons in a position of trust to the complainant, and not strangers, for example, a classmate or someone who the complainant met at a party. We define peers as those within this category who were within six years of the complainant in age and older acquaintances as those who were more than six years older than the complainant. In the category of peers, we seek to capture those who were within, or just outside, the close-in-age exceptions at the time of the sexual activity in question. Thirty-six of the complainants in the older acquaintances category first met the accused online.

<sup>b</sup> In all of the tables that refer to "friend's father," biological, foster, and stepfathers are included.

<sup>c</sup> Includes one landlord and one massage therapist.

<sup>d</sup> This number is higher than the total number of complainants because some complainants are reported twice where there was more than one perpetrator.

Table 4: Complainant's Relationship to the Accused and Age When the Abuse Began

Accused's relationship to complainant	Complainant's age (when abuse began)						Total (%)
	Under 10 (%)	10 or 11 (%)	12 or 13 (%)	14 or 15 (%)	16 or 17 (%)	Unknown age (%)	
Stepfather	34 (37)	20 (29)	23 (15)	16 (7)	9 (11)	2 (10)	104 (16)
Biological father	18 (20)	9 (13)	12 (8)	10 (5)	4 (5)	1 (5)	54 (8.5)
Foster father	—	—	3 (2)	2 (1)	2 (2)	—	7 (1)
Adoptive father	—	—	2 (1)	1 (0)	—	—	3 (0.5)
Other relative	27 (29)	24 (35)	31 (20)	28 (13)	9 (11)	2 (10)	121 (19)
Mother	2 (2)	—	2 (1)	—	—	—	4 (0.5)
Older acquaintance	—	1 (1)	22 (14)	50 (23)	13 (15)	1 (5)	87 (14)
Peer	—	—	10 (6)	21 (10)	4 (5)	4 (20)	39 (6)
Boyfriend	—	2 (3)	8 (5)	16 (7)	4 (5)	—	30 (5)
Family friend	3 (3)	6 (9)	20 (13)	21 (10)	6 (7)	—	56 (9)
Friend's father	1 (1)	1 (1)	5 (3)	11 (5)	1 (1)	6 (30)	25 (4)
Other adult in position of trust	5 (5)	4 (6)	9 (6)	19 (9)	19 (23)	1 (5)	57 (9)
Stranger	—	—	3 (2)	12 (6)	10 (12)	1 (5)	26 (4)
Unknown relationship	2 (2)	1 (1)	5 (3)	10 (5)	3 (4)	2 (10)	23 (3.5)
Total	92 (14)	68 (11)	155 (24)	217 (34)	84 (13)	20 (3)	636 (100)

Table 5: Age of Complainant by Relative/Non-Relative Status of Accused

Accused's relationship to complainant	Complainant's age (when abuse began)					Total (%)
	Under 12 (%)	12 or 13 (%)	14 or 15 (%)	16 or 17 (%)	Unknown (%)	
Relative	134 (84)	73 (47)	57 (26)	24 (29)	5 (25)	293 (46)
Non-relative	23 (14)	77 (50)	150 (69)	57 (68)	13 (65)	320 (50)
Unknown	3 (2)	5 (3)	10 (5)	3 (4)	2 (10)	23 (4)
Total	160 (25)	155 (24)	217 (34)	84 (13)	20 (3)	636 (100)

Table 6: Age of Complainant and Location of Assault

Location of assault	Age abuse began					Total (%)
	Under 12 (%)	12 or 13 (%)	14 or 15 (%)	16 or 17 (%)	Unknown (%)	
Complainant's home	122 (79)	80 (51)	72 (33)	30 (38)	3 (16)	307 (49)
Not complainant's home	28 (18)	70 (45)	137 (64)	49 (61)	14 (74)	298 (48)
Unknown	4 (3)	7 (4)	6 (3)	1 (1)	2 (10)	20 (3)
Total	154 (25)	157 (25)	215 (34)	80 (13)	19 (3)	625 (100)

Twenty-six complainants (4 percent) were girls in state care.<sup>57</sup> We use the term “state care” loosely to describe girls living in some kind of foster care arrangement or group home. In some cases, the court is explicit that the girl is in the custody of the provincial ministry, but, in most cases, the precise nature of the legal arrangement is not specified. This number may be a low estimate because we did not include girls living with family members other than their parents unless there was explicit mention of involvement by a provincial ministry.<sup>58</sup> These numbers demonstrate the overrepresentation of girls in care within our group of complainants—for example, recent federal government statistics suggest that, as of 2016, approximately 0.5 percent of children under the age of fourteen are in foster care.<sup>59</sup>

Some of the cases of girls in foster care involved girls who had been sexually assaulted in multiple homes, some of whom became pregnant as a result.<sup>60</sup> The largest number of cases—five—involved foster fathers as accused persons,<sup>61</sup> three other

57. An additional 21 cases (3%) involved girls who were runaways or homeless.

58. This approach may miss cases where girls are in informal or voluntary relationships of care. See also Judith Mosoff et al, “Intersecting Challenges: Mothers and Child Protection Law in BC” (2017) 50:2 University of British Columbia Law Review 435 at 450–51.

59. According to a recent Statistics Canada report, 1.4% of Canadian children are not living with their parents, 1% are living with relatives, and 0.5% are in foster care. Statistics Canada, *Census in Brief: Portrait of Children's Family Life in Canada in 2016*, by France-Pascale Ménard, Catalogue No 98-200-X2016006 (Ottawa: Statistics Canada, 2 August 2017) at 2. A study by the BC Representative for Children and Youth, while not providing a comprehensive count, suggests that 0.5% of students enrolled in K to 12 for the 2014/15 school year were in state care. Of the students in care, 68.8% were Indigenous. British Columbia, Representative for Children and Youth, *Room for Improvement: Towards Better Education Outcomes for Children in Care*, by Bernard Richard (Victoria: BC Representative for Children and Youth, 2017) at 10.

60. Two complainants who were sexually assaulted by their foster fathers became pregnant as a result. *R v Johnston*, 2014 YKTC 60 [Johnston]; *R v SH*, 2014 ONCA 303 [SH].

61. *Ibid*; *R v CAS*, 2015 BCPC 241[CAS]; *R v Wilbur Dedam*, 2016 NBQB 223 [Dedam]; *R v HP*, 2015 ONSC 2104 [HP].



cases involved men in foster father-like roles,<sup>62</sup> and two other cases involved foster brothers.<sup>63</sup> Two of these girls were sexually assaulted by their pimps, and one of these girls died by suicide.<sup>64</sup> In many of these cases, the complainant was not the only girl victimized. Fathers sometimes victimized both their foster daughter(s) and their biological or adopted daughter(s),<sup>65</sup> and both cases involving pimps involved multiple complainants, some outside the age range of our study.<sup>66</sup> Almost a third of the cases involving girls in care were historical prosecutions, which is a higher rate than in the study overall, suggesting that it is particularly difficult for girls in foster care to come forward or to be believed when they do. There were at least three girls in this category who were Indigenous, but we were unable to make this determination about most of the girls in these cases.<sup>67</sup>

In many of the cases in our study, limited information was provided about the complainant. For example, we know that at least forty-two of the girls (7 percent) were Indigenous, but, for a large majority of complainants, this information was not provided in the judgment(s). Eighty-two girls (13 percent) did not live with either parent, and nineteen girls (3 percent) had parents who were addicted to drugs or alcohol. Thirteen complainants (2 percent) were identified as having a mental disability or mental illness.<sup>68</sup> It is quite possible that this is an underrepresentation because these cases are less likely to lead to charges as girls with disabilities may have more difficulty disclosing, being believed, or being construed as good witnesses. Nineteen of the complainants (3 percent) became pregnant one or more times as a result of the sexual activity in question. The majority of the pregnancies resulted from sexual

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62. *R v JM*, 2016 ONSC 5139; *R v CJC*, 2016 ONSC 1768; *R v Holman*, 2014 NWTSC 13 [Holman].

63. *R c A et B*, 2016 QCCQ 19642; *R v NE et al*, 2015 ONCJ 767.

64. In *R v Ackman*, 2016 MBQB 109 [Ackman], the accused pimp was convicted of sexual offenses against, among others, three adolescent girls, all of whom were runaways. One of the complainants, who was in the care of Child and Family Services, died by suicide prior to trial.

65. *CAS*, *supra* note 61 (involved an accused sexually assaulting his biological, adoptive, and foster children); *HP*, *supra* note 61 (involved an accused sexually assaulting his stepdaughter and his foster daughter).

66. *Ackman*, *supra* note 64 (three complainants included in study; six total); *R v Moazami*, 2015 BCSC 2055 (five complainants included in study; eleven total).

67. There were two Indigenous complainants in *Dedam*, *supra* note 61 (assaulted by a foster father who was also Indigenous) and one in *R v Dupuis*, 2016 BCPC 163 (assaulted by a boyfriend). An additional two girls were assaulted by an Indigenous accused in a foster parent-type role in *HP*, *supra* note 61, and *Holman*, *supra* note 62, although no specific mention was made of whether the girls were Indigenous.

68. Statistics Canada, *Violent Victimization of Women with Disabilities, 2014*, by Marta Burczycka, Catalogue No 85-002-X (Ottawa: Statistics Canada, 18 October 2018) at 4 (approximately 4% of those fifteen years or older live with mental health-related disabilities, defined as including emotional, psychological, and mental health conditions).

assaults by fathers or other family members, likely because of the ongoing nature of these offences. DNA tests on the child sometimes provided critical evidence against the perpetrator.<sup>69</sup>

### *The Accused*

There were a total of 518 accused persons in these cases: six women (1 percent); 511 men (99 percent); and one accused for whom the sex of the accused was not clear from the decision.<sup>70</sup> In general, the accused was significantly older than the complainant. Of the 351 accused persons for whom age was known, the average age difference between the complainant and the accused was nineteen years. One would expect a large age difference given the significant number of fathers, uncles, and grandfathers who were accused persons. When we removed all of the intra-family cases (including step and foster family members), the average age difference was lower but was still 15.6 years. This suggests that the majority of the cases are not young men just outside the close-in-age exceptions. Many of the accused in these cases were at least twice as old as the complainant, if not considerably older.

However, there were some charges against adolescent boys. Thirty-six of the 518 accused (7 percent) were youth under the age of eighteen. Approximately one-third of these accused were brothers (including step and foster brothers), 8 percent were cousins, and another 8 percent were uncles. The cases involving young accused tended to involve a significant degree of violence. These cases included two charges of aggravated sexual assault, the most serious sexual offence covered by our study.<sup>71</sup> There were only three cases in the entire sample where aggravated sexual assault was charged, and two of them were in this small group of youth. In the entire sample, there were only three youth charged where the complainant was described as having agreed to the sexual activity in question.<sup>72</sup> All three of these cases involved twelve- or thirteen-year-old complainants and sixteen- or seventeen-year-old accused. In one of these cases, the accused successfully raised a mistaken belief-in-age

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69. *R v Smith*, 2013 ONSC 1825; *Johnston*, *supra* note 60.

70. Three of the female accused were mothers of the complainant. *R v JAVC and DAC*, 2015 BCPC 218 (mother and father together) [*JAVC and DAC*]; *R c KH*, 2014 QCCA 262 (mother charged alone) [*KH*]; *R v JV*, 2015 ONCJ 815 (mother and father together) with a total of four complainants being sexually assaulted by their mothers. The additional three female accused include a woman accused of sexually assaulting a runaway complainant (*Québec (Directeur des Poursuites Criminelles et Pénales) c PB*, 2014 QCCQ 11590); a youth director at the complainant's church (*R v JMC*, 2016 NBQB 147) and an acquaintance of the complainant (*R v GM*, 2016 SKQB 191).

71. *R v GCP*, 2015 MBQB 160; *R v TGT*, 2014 BCPC 210.

72. *R v ETM*, 2016 ABPC 43 [*ETM*]; *R v R(R)*, 2014 ONCJ 96 [*RR*]; *R v UHC*, 2015 NSPC 10 [*UHC*].

defence,<sup>73</sup> and, in one case, this defence was unsuccessful, and the accused convicted.<sup>74</sup> In the third case, the accused pled guilty to sexual interference and received a conditional discharge such that, if he complied with the conditions, he would not have a criminal record.<sup>75</sup>

Identifying how many accused were Indigenous was challenging. Fifty-six of the 518 accused (11 percent) were identified as Indigenous, while, in roughly 14 percent of cases, it was clear that the accused was not Indigenous. In the remaining 75 percent of the cases, it was impossible to glean this information. We assumed that most sentencing cases involving Indigenous accused would mention this fact, given the mandatory nature of section 718.2(e) of the *Criminal Code*, which requires the sentencing judge to consider non-custodial options, particularly for Indigenous offenders.<sup>76</sup> When we examined only the 298 accused for whom sentencing information was available, fifty-two (18 percent) were identified as being Indigenous.<sup>77</sup> Of note is the fact that only one of the twenty-two accused (5 percent) to receive a non-custodial sentence was Indigenous,<sup>78</sup> whereas five of the sixteen accused (31 percent) who were designated as dangerous offenders were Indigenous, as were two of the five men given indeterminate sentences.<sup>79</sup> These numbers suggest that further research is necessary to determine whether Indigenous men are being sentenced more harshly for these offences than non-Indigenous men.<sup>80</sup>

### *Prevalence and Characteristics of the Abuse*

Sixty-two percent of complainants reported being sexually assaulted more than once. Fifty-five percent of complainants reported three or more sexual assaults, which is probably a reflection of the large number of charges against family members who have access to the complainant over an extended period of time. Of the

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73. *RR*, *supra* note 72.

74. *UHC*, *supra* note 72.

75. *ETM*, *supra* note 72.

76. *Criminal Code*, *supra* note 44.

77. In 2016, Indigenous people made up roughly 4.9% of the population of Canada as determined by the Canadian census. Statistics Canada, *Aboriginal Peoples in Canada: Key Results from the 2016 Census*, Catalogue No 11-001-X (Ottawa: Statistics Canada, 25 October 2017).

78. *R v LI*, 2014 MBPC 59.

79. *R v Clarke*, 2016 SKCA 13 [*Clarke*]; *R v JWH*, 2015 ONCA 617 [*JWH*].

80. Three Indigenous offenders were declared dangerous offenders and were sentenced to a determinate term of imprisonment followed by a long-term supervision order. *R v EGY*, 2014 SKQB 281 [*EGY*]; *R v DJS*, 2015 BCCA 111 [*DJS*]; *R v Wilton*, 2016 SKCA 131 [*Wilton*]. Two Indigenous offenders were declared dangerous offenders and received an indeterminate sentence. *Clarke*, *supra* note 79; *JWH*, *supra* note 79.

nineteen girls who reported pregnancies from the sexual assault, seventeen were repeatedly sexually assaulted.<sup>81</sup> In cases involving family members or other adults in positions of trust, the cases involving multiple assaults often showed a pattern of abuse that escalated over time in its intrusiveness—for example, ranging from touching to sexual intercourse.<sup>82</sup> The cases also give some insight into the methods used by adult men, particularly those in positions of trust, such as family members, who sexually assault teenage girls. In some cases, there was an extended effort to groom the victim and to normalize the behaviour as “sex education.”<sup>83</sup> In most cases, however, the perpetrator ended up forcing himself on the victim, using violence and threats<sup>84</sup> or by taking advantage of a time when the complainant was asleep or intoxicated.<sup>85</sup>

Ninety-nine out of the 510 cases—or almost 20 percent of our cases—involved historical prosecutions. For the purposes of categorization, we defined a historical prosecution as one in which at least ten years had elapsed between the last sexual assault and the complainant coming forward to report the sexual abuse. In an additional twenty-three cases (5 percent), there was a gap of eight to nine years in the complainant coming forward. In some of the historical cases, the complainant had tried to tell someone about the abuse earlier but had been disbelieved. A significant majority of the complainants in historical cases (69 percent) reported abuse by a family member. For this purpose, we included mothers’ live-in boyfriends and foster family members within the definition of family. This compares with only 46 percent of the entire sample involving an accused who was a family member. Over one-third of all pregnancies reported (36 percent) were in the context of historical prosecutions, with girls in seven of these cases (7 percent) reporting at least one pregnancy. The conviction rates were slightly higher for the historical prosecutions, as compared to the overall sample, both when including and excluding sentencing decisions (84 percent versus 80 percent with sentencing decisions included and 73 percent versus 68 percent with sentencing cases excluded).

The large number of historical cases involving family members suggests that it is particularly challenging for girls to come forward where they are assaulted by a family member. Even where the prosecution did not meet our definition of historical, the span of time over which a number of these girls were sexually assaulted, particularly by fathers, demonstrates how difficult it is for this group of girls to either report the abuse against them or to be believed. In some cases, girls were discouraged from reporting—for example, one mother told her daughter to “act as if

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81. One girl became pregnant after one sexual assault, and, for one complainant, the number of assaults was unclear.

82. *R v DRWH*, 2016 BCPC 27; *R v MM*, 2014 MBPC 23.

83. See e.g. *JAVC and DAC*, *supra* note 70. See also *R v AEB*, 2016 BCPC 100.

84. See e.g. *R v PK*, 2016 NLTD(G) 33.

85. See Tables 7a and 7b.

it was just a dream,”<sup>86</sup> while some abusers told girls that the girls would get in trouble if they disclosed the abuse.<sup>87</sup>

Intoxication played a significant role in our cases. Roughly 22 percent of the complainants—or 135 girls—reported being sexually assaulted at least once after having consumed intoxicants, including forty-seven complainants (8 percent) who were unconscious as a result of intoxication. An additional fifty-five complainants (9 percent) described being sexually assaulted at least once when they were asleep, other than through intoxication. The rate of intoxicated complainants or sleeping complainants varied based on the relationship between the accused and the complainant (Tables 7a and 7b).

Table 7a: Complainant Intoxication and Relationship to Accused

<b>Relationship</b>	<b>Number of intoxicated complainants per complainants in the relationship group (%)</b>
Friend’s father	12 of 25 (48)
Older acquaintance	34 of 83 (41)
Stranger	8 of 26 (31)
Boyfriend	9 of 30 (30)
Family friend	11 of 56 (20)
Mother	1 of 4 (25)
Biological father	9 of 51 (18)
Other adult in position of trust	10 of 57 (18)
Foster father	1 of 6 (17)
Peer (e.g. friend, classmate)	6 of 38 (16)
Stepfather	15 of 104 (14)
Other family	12 of 119 (10)
Unknown relationship	7 of 23 (30)
Total	135 of 625 (22)

Table 7b: Complainants Assaulted while Sleeping by Relationship to Accused

<b>Relationship</b>	<b>Number of sleeping complainants (not also intoxicated) per complainants in relationship group (%)</b>
Adoptive father	1 of 3 (33)
Other family	22 of 119 (18)
Family friend	9 of 56 (16)
Stepfather	16 of 104 (15)
Biological father	6 of 51 (12)
Friend’s father	1 of 25 (4)
Unknown relationship	1 of 23 (4)
Total	56 of 625 (9)

86. *R v KR*, 2016 ONSC 2000.

87. *R v HJB*, 2014 NLTD(G) 87.

The relationship between the accused and the complainant differed between intoxicated complainants and sleeping complainants. Girls who were intoxicated were most likely to report sexual assault by men who were the parents of their friends, older acquaintances (more than six years older than the complainant), strangers, and boyfriends. For girls who reported sexual assault while they were asleep, the highest rates were where the accused was a family member or family friend, which is likely a function of opportunity and access. Overall, the conviction rate for the accused who allegedly assaulted intoxicated complainants was roughly the same as for non-intoxicated complainants. However, those who were convicted of assaulting intoxicated complainants were more likely to force the complainant to endure a trial. The average rate of guilty pleas of those convicted in the entire study was 35 percent, and this number dropped to 24 percent where the complainant was intoxicated.

Pornography played a role in the sexual abuse in many cases. We saw pornography being used as a sexual script, with abusers demanding that girls do what they saw in pornography or showing it to them as part of the grooming process.<sup>88</sup> While there is much public attention on the phenomenon of teenage boys seeking nude photos from teenage girls, this practice is not limited to close-in-age peers. We saw a number of cases in which adult male relatives also made pornography of adolescent girls<sup>89</sup> or encouraged the girls to take nude photos of themselves and send them to the accused.<sup>90</sup>

## *Outcomes*

As mentioned above, convictions were overrepresented in our sample because of the large number of sentencing decisions and sentence appeals that, by definition, involve convictions. When examining convictions from the perspective of the accused, 27 percent of all accused pled guilty to at least one charge of a sexual offence under study, 51 percent were convicted of all charges at trial, and an additional 5 percent were convicted of some charges at trial. Seventeen percent of the accused were acquitted absolutely. Where sentencing cases were excluded, and only the 305 trials and appeals from verdict decisions are included, the conviction rate goes down from 83 percent to 68 percent (with 61 percent of the accused convicted of all of the sexual

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88. See e.g. *R c AE*, 2016 QCCQ 2822. See also *R v TDF*, 2016 BCSC 984; *R v OB*, 2016 ONSC 6861; *R v D(AD)*, 2014 ONSC 3254.

89. See e.g. *R c LC*, 2015 QCCQ 4510. See also *R v TD*, 2015 ONCJ 435; *R v RRI*, 2016 NSPC 66 [RRI].

90. *R v LV*, 2016 SKCA 74; *R v WHY*, 2014 ONCJ 757; *KH*, *supra* note 70; *RRI*, *supra* note 89.

offences charged, and an additional 7 percent convicted of some, but not all, of the sexual offences charged). Twenty-seven percent of these accused were acquitted of all charges. The outcome in 5 percent of these cases is unknown as a new trial was ordered on appeal, and we have been unable to determine the ultimate outcome.<sup>91</sup> Conviction rates also varied based on the relationship between the complainant and the accused.

In Tables 8 and 9, we present conviction rates by relationship and then by age from the perspective of the complainant, which means that there will be more cases than we actually had in the study in order to account for multiple complainants in some cases. Similarly, we have decided to focus on cases where a verdict was reached rather than sentencing cases. Thus, the following information represents all trial cases and appeals from verdicts at trial.

Excluding categories with only one case, conviction rates were highest where the accused was a stranger to the complainant (85 percent) and lowest where the accused was a family friend (59 percent) or a boyfriend (58 percent). While the number of cases involving mothers as accused is too small to draw any conclusions, we note that there were no cases in the entire study where an accused mother was acquitted. While we did not find a consistent relationship between the age of the complainant and conviction rates, our results are consistent with the suggestion that convictions are most likely for the girls whose abuse began at the youngest ages.

Conviction rates were highest where the complainant was under twelve years old when the alleged sexual offences began. However, we did not see a consistent decline as the complainant got older, as was seen in the mock jury studies cited above. There are at least two reasons why one might not expect the results of the mock jury studies discussed above to apply in our cases. First, of the 378 accused who went to trial in our study, only thirty-nine of them (10 percent) had a jury trial. Second, because in many of our cases the abuse was ongoing and because of the number of historical cases, many of the complainants in our study were much older by the time the case went to trial than when the sexual abuse began, a factor not accounted for in mock jury studies.

In almost all of the cases involving family members, consent was not an issue because of the complainant's age and because the perpetrator was aware of that age. This means that the only argument the accused could make at trial was that the abuse never happened at all. These cases featured attacks on the complainant's credibility and attempts to portray her as troubled and vindictive.<sup>92</sup>

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91. In 2014–15, the conviction rate for violent offences generally in Canadian adult criminal courts was 49% of cases that proceeded to verdict. Statistics Canada, *Adult Criminal Court Statistics in Canada, 2014/2015*, by Ashley Maxwell, Catalogue No 85-002-X (Ottawa: Statistics Canada, 21 February 2017).

92. *R v PDB*, 2014 NBQB 213; *R v WR*, 2016 ONSC 1243.

Table 8: Convictions by Complainants' Relationship to Accused (Sentencing Cases Excluded)

<b>Relationship to complainant</b>	<b>Convictions (%)</b>	<b>Acquittals (%)</b>	<b>New trial ordered on appeal (%)</b>	<b>Total</b>
Mother	1 (100)	—	—	1
Stranger	11 (85)	2 (15)	—	13
Older acquaintance	39 (81)	7 (15)	2 (4)	48
Other adult in positions of trust	34 (81)	8 (19)	—	42
Other family	53 (78)	13 (19)	2 (3)	68
Friend's parent	11 (69)	4 (25)	1 (6)	16
Peer (e.g. friend, classmate)	9 (69)	2 (15)	2 (15)	13
Biological father	17 (65)	6 (23)	3 (12)	26
Stepfather	41 (61)	21 (31)	5 (7)	67
Family friend	23 (59)	12 (31)	4 (10)	39
Boyfriend	7 (58)	5 (42)	—	12
Foster father	1 (50)	1 (50)	—	2
Adoptive father	—	1 (100)	—	1
Unknown	5 (56)	3 (33)	1 (11)	9
Total	252 (71)	85 (24)	20 (6)	357

Table 9: Conviction Rate and Complainant Age When Abuse Began (Sentencing Cases Excluded)

<b>Complainant age when abuse began</b>	<b>Convicted (%)</b>	<b>Acquitted (%)</b>	<b>New trial ordered on appeal (%)</b>	<b>Total</b>
Under 12	74 (76)	17 (18)	6 (6)	97
12–13	55 (65)	24 (28)	6 (7)	85
14–15	89 (73)	26 (21)	7 (6)	122
16 and over	32 (64)	17 (34)	1 (2)	50
Unknown age	2 (67)	1 (33)	—	3
Total	252 (71)	85 (24)	20 (6)	357



## Sentencing Outcomes

Information on sentencing was available for 298 accused in our study. Sentencing information was more likely to be available where the accused was a family member of the complainant. Overall, these cases suggest that sentencing judges are taking these crimes seriously. Only twenty-two accused (7 percent) received non-custodial sentences, and another ten (3 percent) received sentences under six months of imprisonment. Not surprisingly, five of the accused who received non-custodial sentences (23 percent) were peers within six years of the complainant's age, even though only 4 percent of accused in the study were peers of the complainant. This finding suggests that judges are seriously considering the young age of the accused in sentencing. Eleven male offenders (three of whom were Indigenous) received an order for long-term supervision in the community after serving their sentence,<sup>93</sup> and five received an indeterminate sentence after having been found to be a dangerous offender (two of whom were Indigenous).<sup>94</sup> Of those who received determinate, custodial sentences for whom sentencing information was available, the average sentence length was three years and nine months, and more than half of the accused for which sentencing information was available received penitentiary time.

The relationship of the complainant to the accused was clearly important in sentencing. Both strangers and biological parents received, on average, the harshest sentences. One might expect these results because sexual assaults committed by strangers are seen through a lens infused with stereotypes about "real" sexual assaults and biological parents because of the profound breach of trust involved. Mothers received longer sentences than biological fathers, but the number of mothers is too small to draw any conclusions about this difference. Sentences were available for two of the three accused mothers in our study. Both of these women received sentences averaging 6.5 years,<sup>95</sup> while strangers on average received sentences just over

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93. *R v Law*, 2014 BCSC 1854; *R v Dakin*, 2014 ONSC 3794; *R v RJC*, 2015 NLTD(G) 154; *R v Jenik*, 2015 ABPC 107; *R v MNP*, 2015 NSSC 158; *R v Munro*, 2014 ONCJ 226; *R c Guindon*, 2015 QCCQ 7659; *EGY*, *supra* note 80; *DJS*, *supra* note 80; *Wilton*, *supra* note 80; *R v Cote*, 2015 SKCA 52.

94. *Clarke*, *supra* note 79; *JWH*, *supra* note 79; *R v Groves*, 2015 ONSC 2590; *R v M(PE)*, 2014 ONSC 2565; *R v Tippet*, 2015 ONCA 697. An additional accused was found to be a dangerous offender and received an indeterminate sentence, however a determinate sentence of three years concurrent was imposed for the sexual interference count against an adolescent girl. *R v White*, 2014 ONSC 5543.

95. *KH*, *supra* note 70 (nine years); *JAVC and DAC*, *supra* note 70 (four years, nine months).

six years. Biological fathers, on average, received sentences of five years, while step-fathers received, on average, sentences of approximately 4.7 years. Friends' fathers, older acquaintances, peers, and boyfriends received sentences of, on average, between two and three years. Other adults in positions of trust, which included teachers, coaches, and health care workers, fell somewhere between these two categories, with an average sentence of between three and four years. Non-custodial sentences were least likely for mothers, biological fathers, and stepfathers, and most likely for boyfriends and brothers, which suggests that courts are conscious of age differences and relationships of trust at least for these categories of offenders. One notable fact, however, is that sexual assaults by strangers tended to be one-time events. Sexual assaults by biological fathers and stepfathers, on the other hand, were often ongoing, sometimes even over a number of years. Given this fact, and the abuse of trust involved, it is somewhat surprising to see strangers given harsher sentences than those for fathers. Table 10 shows the average sentence for all cases other than those resulting in non-custodial or indeterminate sentences, with the sentences reported before credit for pre-trial custody has been deducted.

Table 10: Average Sentence by Relationship (Non-Custodial and Indeterminate Sentences Omitted)

Relationship to complainant <sup>a</sup>	Average sentence (number sentenced) <sup>b</sup>
Adoptive father	84 months (1)
Mother	78 months (2)
Stranger	74 months (13)
Biological father	57 months (32)
Stepfather	56 months (47)
Foster father	53 months (3)
Other adult in position of trust	47 months (24)
Other family	40 months (57)
Unknown relationship	40 months (9)
Boyfriend	36 months (16)
Older acquaintance	34 months (32)
Peer (e.g. friend, classmate)	32 months (12)
Friend's father	31 months (6)
Family friend	25 months (16)
Average (non-custodial and indeterminate sentences excluded)	45 months (270)

Note: <sup>a</sup> Where more than one relationship was present we have included the relationship involving the longest sentence.

<sup>b</sup> The length of sentence has been rounded to the nearest month.

## Conclusion

This article has provided an overview of the 680 decisions reviewed for this study in order to provide data on the kinds of sexual assault cases involving adolescent girl complainants that are being considered by the criminal justice system. We plan to analyze the specific features of particular categories of sexual assaults, such as those within the family and against girls in care, in more detail in subsequent publications. It is important to acknowledge that the 625 girls in these cases represent just the tip of the iceberg in terms of complaints of sexual assault by girls in this three-year period. In many respects, these cases are the successful ones: these are the cases where girls have been able to come forward, have been sufficiently believed to warrant charges and the cases have proceeded to a verdict.<sup>96</sup>

A number of our findings are consistent with the social science evidence on sexual assault. Adolescent girls are most likely to allege sexual assault against men that they know—with stepfathers and biological fathers at the top of the list. However, we found a lower percentage of strangers and boyfriends accused of sexual assault in this study than is reported in the social science literature. One possible explanation for the small number of strangers in our study could be that strangers are less likely to be apprehended and charged. Conviction rates were higher in cases involving complainants who were younger when the abuse began, but there was not a consistent decrease in convictions as the complainant's age increased. The disparity between age when the sexual abuse took place and age at trial may account for some of the difficulty in establishing the relationship between the complainant's age and conviction.

Even when intra-family cases were excluded, our complainants were reporting sexual offences by men who were, on average, 15.6 years older than them, not young men just outside the close-in-age exceptions. The small number of cases committed by youth tended to be the cases involving the most violence or involving twelve and thirteen-year-old complainants. The high number of cases alleging historical offences, especially in the family context, would suggest that it is particularly difficult for girls to come forward alleging sexual assault against, most often, a father or other family member while they continue to reside with that individual and may be dependent on him. The historical cases demonstrated both the difficulty of reporting sexual assault and the degree to which sexual offences against adolescent girls can have profound lifelong implications for those girls.

Our results are consistent with the view that younger adolescents are in particular danger in their own home from relatives and that more sexual assaults against older girls are committed outside of the home by non-relatives. Girls in care are

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96. Holly Johnson, "Limits of a Criminal Justice Response: Trends in Police and Court Processing of Sexual Assault" in Elizabeth A Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012) 613 at 631.

overrepresented as complainants. Consistent with other criminal justice system data, Indigenous men are overrepresented as accused persons. This case law survey indicates that, in the cases involving family members, the abuse may continue over an extended period of time, and formal reporting to authorities may be delayed. We saw very few cases in which girls thought they were in a positive or mutual relationship with the perpetrator, only to come to regret it as they got older.

In general terms, our case sample makes clear that the intersecting inequalities of being young and female make adolescent girls particular targets for sexual assault. The large age differences between the perpetrators and the victims that we saw in many of these cases heightened the inequality that already exists on the basis of sex. When combined with the devastating breach of trust that occurs in many of these cases, and the high stakes involved in reporting someone who may live in your home or attend the same school, the barriers to engaging the criminal justice system were very much apparent. Many of these girls made valiant and repeated efforts to have someone believe their allegations but were either initially not believed or their allegations were hidden, often by other family members.

Overall, we saw that the criminal justice system is treating these cases seriously. Conviction rates were quite high, although almost 30 percent of these men were acquitted. A majority of convicted offenders for whom sentencing information was available were sentenced to penitentiary time. Having read these cases, it is hard not to come away with the sense that these crimes are having a devastating impact on complainants, both when they are young and, as seen in the historical cases, for decades afterward. The idea that our laws relating to sexual offences against teenagers are criminalizing harmless adolescent experimentation is simply not borne out by this large group of cases.

### *About the Contributors / Quelques mots sur nos collaboratrices*

**Janine Benedet** is a Professor at the Peter A. Allard School of Law at the University of British Columbia. Her research considers the law's treatment of sexual violence against women, including sexual assault, prostitution, pornography, and sexual harassment. With Isabel Grant, she is currently researching the criminal law's treatment of sexual assault of women and girls across the lifespan, considering the age-specific barriers that interfere with women's access to justice. She also provides pro bono representation to women's groups in litigation concerning the oppression of women in prostitution.

**Isabel Grant** is a Professor at the Peter A. Allard School of Law at the University of British Columbia. Her research focuses on violence against women, including sexual assault, criminal harassment, intimate femicide, and HIV non-disclosure prosecutions. She is currently working with Janine Benedet on a large project on sexual assault across the lifespan, examining age-specific barriers to effective prosecution of these cases. She is on the Law Program Committee for LEAF National and a member of the Expert Advisory Panel for the Canadian Femicide Observatory for Justice and Accountability.